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T.R.A. DOCKET ROOM

February 16, 2005

Chairman Pat Miller
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**Re: *BellSouth Telecommunications, Inc.'s Revisions to its Access Services
Tariff to Introduce Commingling of Unbundled Network Elements with
Access Services (Tariff Number: 2005-0125)***
Docket No. 05-00051

Dear Chairman Miller:

Please find enclosed an original and fourteen copies of the Complaint of AT&T and Request to Initiate a Contested Case Proceeding. This document corrects our previous filing which contained an incorrect tariff reference both in the caption and on page 4. The correct BellSouth Tariff number is 2005-0125.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/djc

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

February 16, 2005

In re: BellSouth Telecommunications, Inc.'s Revisions)
to its Access Services Tariff to Introduce Commingling) Docket No.05-00051
of Unbundled Network Elements with Access Services)
Tariff Number: 2005-0125)

**COMPLAINT OF AT&T AND REQUEST TO INITIATE A CONTESTED CASE
PROCEEDING**

AT&T Communications of the South Central States, LLC, ("AT&T"), pursuant to T.C.A. § 65-4-117 and Tennessee Regulatory Authority ("TRA") Rule 1220-1-2-.02, hereby files this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") in opposition to certain provisions of the above-captioned tariff and asks the TRA to convene a contested case proceeding to address Sections E2.4.4.C.10, 11 and 12 of that tariff filing. In support of this application, AT&T respectfully shows as follows:

1.

The name and address of the Petitioner is:

AT&T Communications of the Southern States, LLC
1230 Peachtree Street
4th Floor
Atlanta, Georgia 30309

2.

All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of Petitioner:

Henry Walker
Boulton Cummings Connors & Berry, PLC
1600 Division Street, Suite 700
P.O. Box 340025

Nashville, Tennessee 37203
Phone (615) 252-2363

Gene V. Coker
Room 4W32
1230 Peachtree Street NE
Atlanta, Georgia 30309
Phone (404) 810-8700

3.

BellSouth is an incumbent local exchange company certificated by the TRA to provide local exchange services in Tennessee. BellSouth's address for receiving communications from the Authority is:

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
Phone (615) 214-6301

4.

On January 27, 2005, BellSouth submitted to the Authority tariff revisions, which provide that unbundled network elements ("UNEs") may be connected, combined or attached to BellSouth access services. The process of combining UNEs with access services is referred to as "commingling." The proposed tariff, however, also contains new provisions concerning credits for service interruptions. In Section E2.4.4.C, the tariff states that credit allowances will not be given for service interruptions following a commercial power failure (Sub-Section 10), "labor difficulties" or criminal actions directed against BellSouth (Sub-Section 11). As discussed further below, AT&T objects to those exemptions. When a customer is no longer receiving service, whether because of a commercial power failure, a criminal act, or "labor difficulties," the customer should not have to continue paying for the service and BellSouth should give the customer a credit for the interruption period. Even more egregiously, the revised tariff also provides that BellSouth will not give the customer a credit allowance under any circumstances if

the customer's service is provided through the commingling of UNEs and access services (Sub-Section 12).

5.

T.C.A. § 65-4-115 prohibits unjust practices: "No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory...."

6.

The proposed tariff violates T.C.A. § 65-4-115. First, Sub-Sections 10 and 11 of the tariff are unjust and unreasonable. BellSouth, as a common carrier, has undertaken to provide a service to its customers. If BellSouth is unable to provide its service, based on any cause that is unrelated to the customer or the customer's end user, then BellSouth should be obligated to provide a reasonable credit for the service outage. Otherwise, the customer would be forced to pay for a service that was not provided. Second, Sub-Section 12 of the proposed tariff provides that BellSouth will not award a credit allowance whenever BellSouth is providing service through UNEs, or combinations of UNEs, that are commingled with access services. BellSouth will, however, award credits following interruptions where service is provided through other types of facilities. This distinction is unjust, unreasonable and discriminatory to the competitive local exchange companies that utilize commingled UNEs and access services. This provision of the tariff implies that any service provided through commingled UNEs and access services is so precarious and subject to interruption that BellSouth should bear no responsibility whatsoever for the adequacy of the service. The FCC, however, has found otherwise. In ordering BellSouth and other local exchange carriers to commingle, upon request, wholesale services with UNEs and UNE combinations, the FCC expressly found that "commingling is a technically feasible

practice.”¹ Since the provision of service over commingled facilities is technically feasible, there is no reason why a customer receiving service through a commingled UNE and access service should be treated any differently than a customer receiving service through other network arrangements. In other words, no customer should be denied compensation for a service outage solely because the customer’s service is provided over commingled facilities. This tariff provision is clearly unreasonable and discriminatory. Finally, the tariff’s limitations on service credits may also be contrary to interconnection agreements. AT&T objects to the extent that the tariff could be construed as waiving AT&T’s right to obtain service credits for service interruptions involving commingled services under its interconnection agreements with BellSouth.

7.

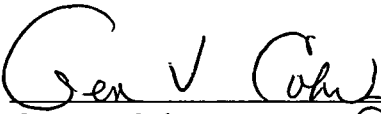
WHEREFORE, AT&T respectfully requests that the TRA:

- A. Convene a contested proceeding regarding Sections E2.4.4.C.10, 11 and 12 of BellSouth’s tariff no. 2005- 0125;
- B. Schedule and conduct an expedited review/hearing to address disputed issues of fact and law regarding those tariff provisions;
- C. Enter a final order denying and canceling Sections E2.4.4.C.10, 11 and 12 of the Tariff; and
- D. Grant such further relief as the Authority may deem appropriate.

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunication Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, ¶ 581, fn 1786 (rel. August 21, 2003)

Respectfully submitted,


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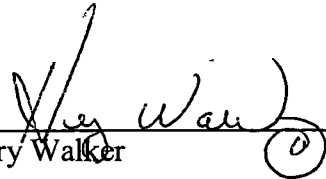
*Attorneys for AT&T Communications of the
South Central States, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via electronically and U.S. mail, postage prepaid, to:

Guy M. Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street, Ste. 2101
Nashville, TN 37201-3300

on this the 16 day of February, 2005.



Henry Walker